IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1537 OF 2006

M/s. Merchant & Co. Pvt. Ltd.,
and Anr. ...Petitioners.
Versus
The Sangli Bank Ltd.,
and Anr. ...Respondents.

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Mr.R.D.Soni i/b. Ram & Co. Advocate for the Petitioners.
Mr.Sunil Sukla i/b. Shukla & Shukla for Respondent No.1.
Mr.Sunil Gangal i/b. Law Asso. for Auction Purchaser.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**
DATED : **JULY 21, 2006.**

P.C.:

1. An exparte decree was passed against the petitioners herein by this Court on 21.4.1987. Subsequent to the enactment of the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, the decree was transferred to Debts Recovery Tribunal for the purposes of execution. A certificate thereafter came to be issued. On failure by the petitioners to satisfy the amount the property which was the subject matter of the present Petition was put up for sale wherein there is a successful auction purchasor. That bidder is not a party to this proceeding

though appearance has been put up before the Court. That bidder has deposited a sum of Rs.1.00 crore 9 lakhs.

2. The principle contention, as urged, on behalf of the petitioners before this Court is, that the Reserve Bank of India has issued guide-lines which are statutory in nature and those were binding on the financial institutions. The petitioners had put up a proposal to settle the same in terms of the guide-lines dated September 3, 2005. Respondent No.1 has not acted upon the same and consequently the present Petition.

3. On behalf of the Respondent No.1 their learned Counsel contends that the guide-lines of September 3, 2005 are addressed to the Public Sector Banks. The Respondent No.1 is not a Public Sector Bank and consequently that circular is not applicable to the Respondent No.1. Apart from that it is submitted that Clause 2(A)(c) of the guide-lines contemplates that in respect of proceedings which are pending the guide-lines would be subject to consent decree being obtained

from the Courts, tribunals and/or other legal forums. In the instant case, it has been pointed that the decree was already passed in the year 1987 and consequently there is no question of consent decree being now obtained as there is already a decree.

4. In support of his contention that the directives are applicable, the learned Counsel for the petitioners has relied upon an unreported judgment of the Division Bench of the Madras High Court dated 3.3.2004 in the case of **UCO Bank Vs. M/s Neetu Autos Private Ltd., & Ors.** In Para-3 the learned Bench has observed that the Reserve Bank of India has clarified that the scheme would be applicable even after a decree is obtained, and the decreetal amount or the amount as calculated by the settlement formula of Reserve Bank of India whichever lower has to be accepted. We have made a query to the learned Counsel whether apart from the guide-lines of September 3, 2005 there is any other guide-lines wherein the Reserve Bank of India has directed that the decreetal amount or the amount worked in terms of the guide-lines whichever is lower is to be accepted, nothing has

been brought to our attention to that effect. Even otherwise, we fail to understand how a decree of a Court, can be interfered with by directions issued by Reserve Bank of India.

5. On the other hand, on behalf of the Respondent No.1, the learned Counsel has drawn our attention to a judgment of the Division Bench of this Court in the case of **Kanwar Vilas Raj Nath & Anr. Vs. Syndicate Bank**, reported in **2005(3) Mh.L.J. 913.** The learned Bench of this Court was pleased to hold that the circulars of the Reserve Bank of India will have to be respected by the Banks, but,it cannot be ignored at the same time that the circulars in terms provide that OTS is subject to a consent decree being obtained. In other words, in respect of pending proceedings to apply OTS a consent decree will have to be obtained from the Court. In Para-8 the Division Bench has held that it cannot be applied to the proceedings of execution. We are in agreement with the view taken by the learned Division Bench.

6. In the instant case, as noted, the first contention as was urged on behalf of Respondent

No.1 was that those guide-lines were not applicable to Respondent No.1 as it is not a Public Sector Bank. The guide-lines of September 3, 2005 are addressed to the Public Sector Banks. Nothing has been brought to our attention that the Banks other than the Public Sector Banks are also bound to comply with these guide-lines. Secondly, the guide-lines itself indicates that in pending proceedings it is subject to consent decree. In the instant case, the decree was obtained as far back in the year 1987. It is not possible to accept the contention advanced on behalf of the petitioners that because Respondent No.1 could not execute the decree the petitioners can avail of the benefit of the guide-lines of September 3, 2005. The language even if that circular is applicable would mean that proceedings are pending and had not been closed. In the instant case, the decree was obtained in the year, 1987 and consequently that would not be applicable.

7. Pursuant to our earlier order, to test the bonafides of the petitioners, we had directed the petitioners to deposit a sum of Rs.25 lakhs with Respondent No.1. After hearing the Counsel for

the parties we were agreeable to give further time of six weeks to the petitioners to make payment, as the successful bidder has already deposited a sum of Rs.1.00 crores and over. The learned Counsel on instructions states that the petitioners require atleast six months time. It is not possible to ask on the successful bidder to keep the amount in the deposit for such a long time. It would be totally inequitable.

8. Considering that, Respondent No.1 is directed to return a sum of Rs.25 lakhs deposited with them to the petitioners within a week from today. In the event the banker cheque has not been encashed the said cheque to be returned to the petitioners.

9. The learned Counsel for the petitioners seeks stay of the present order for a period of four weeks. In our opinion, the property was put for sale, the auction has taken place. The decree is of the year, 1987. The certificates show that interest on the decree has been worked out on the basis of simple interest. We do not think that this is a fit case for granting stay. Application

for stay rejected. Petition disposed of.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]